

In previous numerous inspections of the Deer Creek mine inspector Boston had frequently been accompanied by representatives of the miners at that mine. This function is usually performed by the same individuals who are employees of Emery (Tr. 53, 54). On this inspection he was accompanied by Mr. Larsen, an employee of Emery (Tr. 67). The inspector had not previously been accompanied by a non-employee asserting that right as a representative of the miners.

In the inspector's opinion Rabbitt did not have any special skills, talent or knowledge of the mine that would cause the inspection to be any different from what it would have been without him (Tr. 55). Further, management representatives did not aid the inspector. But generally speaking, miners representatives and company representatives assist the inspector in performing broader, more comprehensive and more complete inspections (Tr. 68).

Boston agrees that when § 103(f) refers to "his miners" the reference is to miners employed at Deer Creek (Tr. 57). But in Boston's view the context of that section of the Act refers to representatives of miners on the international level. Boston had no knowledge whether Rabbitt's presence had been requested by the Deer Creek miners. Further, he did not take steps to ascertain if Rabbitt had been designated in any Part 40 filing by the Deer Creek miners (Tr. 57, 58).

UMWA's Evidence

Thomas J. Rabbitt and Joseph Main testified for the UMWA.

Thomas J. Rabbitt has been employed by the UMWA for seven and one half years as an International Health and Safety Representative (Tr. 71).

He reports to Joseph Main, administrator of the UMWA Health and Safety department (Tr. 117). Rabbitt has held various positions involving matters of safety. He also investigates accidents, disasters, fires and explosions (Tr. 72). Investigations have included the Homer City mine disaster, Greenwich Collieries as well as numerous accidents and fatalities. He has held virtually every job in a coal mine. In addition, he served as a safety committeeman for three years (Tr. 72, 73). His training includes seminars sponsored by MSHA. These are the same courses given the MSHA inspectors (Tr. 74).

On June 12, 1985 his supervisor assigned him to assist in the recovery of bodies and to monitor the investigation of the Wilberg mine disaster of December 19, 1984 (Tr. 74, 87, 118, 119).